

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 1437 OF 2022

(Shobhelal s/o Upasrao Sawalakhe ..vs.. State of Maharashtra, through Office In-charge, Mohadi PS,
Bhandara)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H.D. Dangre, Counsel for the applicant,
Mr. M.K. Pathan, Addl.P.P. for non-applicant/State,
Mr. K.S. Motwani, Counsel for the informant.

CORAM : ROHIT B. DEO, J.

DATED : 11-04-2023

This application is placed before me in view of
order dated 13-2-2023 rendered by the learned
Judge of this Court (Coram : Anil L. Pansare, J.).

2. Bail application earlier preferred by the applicant (Criminal Application (BA) 1218/2021) was rejected by me vide order dated 08-12-2021. I have observed that when I expressed disinclination to grant bail considering the role of the applicant, the learned Counsel submitted that instead of rendering an elaborate order, the application be dismissed with liberty to the applicant to renew the

prayer for bail, if there is no significant progress in the trial in the next six months. I dismissed the application with liberty as prayed. However, the liberty was subject to two conditions. The first condition was that the order shall be brought to the notice of the trial Court by the accused or his Counsel within two weeks, and the other was that the delay shall not be attributable to the accused.

3. The applicant preferred fresh application under Section 439 of the Code of Criminal Procedure (Code) before the trial Court. Twin fold grounds were raised. The first was that there was no significant progress in the trial in the time stipulated by the High Court and the other was that even on merits the applicant is entitled to bail.

4. I have heard the learned Counsel for the applicant Mr. H.D. Dangre, the learned Additional Public Prosecutor for the State Mr. M.K. Pathan and

the learned Counsel for the informant Mr. K.S. Motwani, and with their able assistance the record is perused.

5. The order-sheets of the proceedings are placed on record. It does appear, as is argued by Mr. H.D. Dangre, that the progress in the six months after the rejection of bail by the High Court was not significant. The learned Counsel for the informant Mr. K.S. Motwani would submit that the other accused sought exemption turn by turn and in effect prevented the learned trial Judge from proceeding with the trial. The learned Additional Public Prosecutor Mr. M.K. Pathan would support Mr. K.S. Motwani in the said submission. Mr. H.D. Dangre would emphasis that such occasions were few and far in between and there is no explanation why the trial did not progress or steps in the aid of the trial were not taken on the dates on which none of the accused sought exemption. Mr. H.D. Dangre would

take me through every order-sheet to substantiate the said contention.

6. In so far as Mr. K.S. Motwani's submission is concerned, even if it is assumed that the other accused sought exemptions and on those dates the trial did not progress, I note that the Charge is framed on 14-7-2022 and the fact that not a single witness is examined till date, despite the passage of eight months from the framing of the charge, gives rise a reasonable inference of lack of progress in the trial.

7. Having so observed, it would still be necessary to briefly note the submission on merit. The incident occurred on 07-5-2021. The prosecution alleges that the incident is a fall out of family dispute between cousin brothers on the issue of partition of the agricultural property. Seven persons allegedly attacked the deceased Ravindra and injured his

brother Devendra. Every accused other than the applicant Shobhelal is released on bail by the trial Court. Perusal of the statements under Section 161 of the Code of Devendra and the other witnesses who are projected as eyewitnesses, show that broadly what is stated is that the accused accosted Devendra and Ravindra, abused and threatened them, declared that the duo will have to be killed due to their refusal to partition the agricultural property and an attack was launched. The common thread which runs through the statements is that the applicant Shobhelal and other accused, save and except Baliram, were armed with sticks and Baliram wielded sword. The fatal blow is attributed to the applicant Shobhelal. Baliram allegedly tried to kill Devendra, and indeed pursued the fleeing Devendra brandishing sword. Fortunately Devendra escaped. The prosecution is alleging that while the fatal blow is dealt by the applicant, the other accused also had the common intention to kill Ravindra and

participated in the assault to certain degree including by inflicting stick blows on Devendra. Of some significance is the fact that the prosecution has invoked the provisions of Sections 302, 143, 147, 148, 149, 324, 504 of the Indian Penal Code read with Section 4/25 of the Indian Arms Act.

8. In response to a specific query, it is fairly stated by the learned Additional Public Prosecutor Mr. M.K. Pathan that at least on record there does not appear any previous criminal antecedent. The applicant is in Jail since 07-5-2021 and other accused are released on bail. I have already noted that the progress in the trial is not satisfactory. Coupled with the lack of significant progress is the aspect of the role played by the applicant. While, as noted in the earlier rejection order, the role is different and more prominent in the sense that it is the applicant Shobhelal who struck the fatal blow, the submission canvassed by Mr. H.D. Dangre that

considering the live situation and the fact that even according to the prosecution, the attack was launched by an unlawful assembly who had common object, the fact that it was the applicant Shobhelal's stick which caused death may not be sufficient, in itself, to exclude the principle of parity, cannot be brushed under the carpet.

9. On a holistic consideration of the matter, I am inclined to grant bail.

10. However, the apprehension expressed by Mr. K.S. Motwani is that if released on bail, the applicant may threaten the life and liberty of the informant and/or the other witnesses. This apprehension will have to be addressed and allayed. I am, therefore, inclined to direct that the applicant Shobhelal shall not enter the territorial limits of Bhandara district unless required to attend the dates of the trial and/or otherwise specifically permitted by the

learned trial Judge for just and exceptional reasons.

11. I, accordingly proceed to pass the following order.

(i) The applicant be released from custody on furnishing P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand) and surety of like amount to the satisfaction of the learned trial Judge.

(ii) The applicant shall not enter the territorial limits of Bhandara district till the conclusion of the trial unless required to attend the dates of the hearing/trial or specifically permitted by reasoned order passed by the learned trial Judge, to meet exceptional situations.

(iii) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses.

(iv) The applicant shall furnish the current address and phone number to the concerned Police Station within forty-eight hours from the release

from custody.

(v) The applicant shall attend every date of the trial scrupulously, unless exempted by the trial Judge, which exemption shall be granted only in extra ordinary and exceptional circumstances.

(vi) The learned trial Judge is requested to proceed with the trial expeditiously and endeavour to conclude the same within next twelve months.

(ROHIT B. DEO, J.)

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